IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7636 OF 2004

MANOHAR YASHWANT JOSHI .. PETITIONER

vs

BHASKAR SHANKAR GORE .. RESPONDENT

Shri S. G. Aney Sr. Advocate i/b S. N. Chandrachood for petitioner

Mr. Chandana Salgaokar-Radia for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-9-2-2005

P.C.

The petitioner defendant-tenant has challenged in this writ petition concurrent finding of fact returned by the courts below in favour of the plaintiff-landlord on the question of his bonafide and personal requirement.

2. The suit was filed by the plaintiff on the ground of arrears of rent and on the ground of bonafide and personal requirement of the landlord. No decree was passed on the ground of arrears of rent. The trial court was of the view that the plaintiff requires only one hall out of the suit premises and after so holding the trial court directed the defendant to handover one hall to the plaintiffs. The lower appellate court, however, after concurring with the trial court on the question of bonafide and reasonable requirement of the landlord directed the defenant to handover the entire suit premises to the plaintiff. Being aggrieved by these judgments and decrees the defendant has approached this court.

3. I have heard at considerable length Mr. Aney the learned Senior Counsel appearing for the petitioner-defendant. He contended that the judgments of the courts below are against the weight of evidence on record. The said judgments can be characterised as perverse because the evidence has been misread. The learned counsel contended that the trial court has wrongly come to a conclusion that the premises in possession of the tenants are in fact available to the defendant. Drawing my attention to the evidence of the defendant, the learned counsel contended that the said evidence indicates that the tenant's premises are not available to the defendant. The learned counsel

further contended that the plaintiff has not stepped into the witness box. The evidence is adduced by the sister who could not have deposed about the plaintiff's requirement. He submitted that, therefore, adverse inference needs to be drawn against the plaintiff. His requirement, therefore, cannot be called bonafide.

4. Mr. Aney further submitted that for the plaintiff and his two sisters, sufficient accommodation is available whereas sofar as the defendant is concerned, he has been storing his materials in the suit premises. He has with him only three rooms where he is carrying on his business. Therefore, greater hardship would be caused to him if the decree of eviction is passed.

5. The learned counsel further contended that if the lower appellate court wanted to defer from the trial courts view that the plaintiff's requirement would be satisfied, if only one hall is made available to them and wanted to grant the possession of the entire suit premises to the plaintiff then the lower appellate court ought to have given some sufficient reasons for this view. The learned counsel contended that the judgment of the lower appellate court does not indicate why the lower appellate court thought it fit to direct the defendant to handover the possession of the entire suit premises to the plaintiff. He submitted, that the judgments of courts below suffer from

patent illegality and hence need to be interfered with.

6. I am unable to agree with Mr. Aney. Since on the question of bonafide and reasonable requirement of the landlord, there is a concurrent finding of fact unless there is some perversity attached to it, it would not be proper for me to interfere with it in my writ jurisdiction.

7. It is well settled that the landlord's need has to be genuine and bonafide but he does not have to prove that it is a dire necessity. It is an admitted position that the landlord has two unmarried sisters. They want to start business of tailoring and embroidery. Nothing is brought on record to suggest that they have any source of income. Therefore, their need cannot be doubted and it must override the need of the tenant. I also do not find anything wrong, if the sister who is a power of attorney holder of her brother steps into the witness box and deposes about the need of her brother. The case of the plaintiff is that the suit premises are required by him for himself and for his sisters. In the circumstances of the case no adverse inference can be drawn because he has not stepped into the witness box.

8. The defendant has in his possession three rooms in which he is presently carrying on business. It has also come on record that defendant has two

tenants, one of whom has locked the suit premises and gone away. It appears that the defendant has not taken any action against the said tenant who has locked the suit premises. This is a case where greater hardship would be caused to the plaintif, if the decree of eviction is not passed. In my opinion, no interference is called for with the impugned judgments and decrees. Hence the petition is dismissed.

9. At this stage, Mr. Aney, learned counsel for the defendant states that the defendant be given some time to vacate the suit premises. In the circumstances of the case, in my opinion, the defendant can be given six months' time to vacate the suit premises. Mr. Aney makes a statement that after six months vacant and unencumbered possession of the suit premises will be handed over to the plaintiffs by the defendant. Hence the petitioner defendant is granted six months' time to vacate the suit premises on the condition that he files the usual undertaking in this court within four weeks.

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